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### REMARKS

The Examiner required Applicant to elect a single disclosed species under 35 U.S.C. 121. Applicant confirms the election without traverse to prosecute the invention of species II, claims 1-24, 26-29, 31-38, 40-41 and 60-63. Claims 25, 30, 39, 42-59, 64 are withdrawn from the application.

Claims 1-4, 9-11, 13, 14, 26-28, 31, 35, 60, 62, 63 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Single (GB 2350272A) in view of Waterer (US 603492).

Applicant asserts that the Waterer reference is nonanalogous art. References within the statutory terms of 35 U.S.C. Section 102 qualify as prior art for an obviousness determination only when analogous to the claimed invention. In re Clay, 966 F.2d 656, 658 (Fed. Cir. 1992). Two separate tests define the scope of analogous prior art: (1) whether the art is from the same field of endeavor, regardless of the problem addressed and, (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved. In re Deminski, 796 F.2d 436, 442 (Fed. Cir. 1986); see also In re Wood, 599 F.2d 1032, 1036 (CCPA 1979).

The test for analogous art requires the PTO to determine the appropriate field of endeavor by reference to explanations of the invention's subject matter in the patent application, including the embodiments, function, and structure of the claimed invention. Waterer discloses "jardinières for containing the pots of growing plants for ornamental purposes, and has for its object the greater facility of watering and caring for such plants with the least risk of injury to them or the jardinière or of soiling surrounding furniture, carpets, or floors in furnished apartments wherein such plants are usually displayed." (Waterer, page 1, lines 11-19). Accordingly, the jardinière holds or contains a plant pot, but is not itself a plant pot or plant container in the sense that no portion of the plant or its growth medium makes contact with the jardinière.

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The nature of the problem addressed by the present inventor is the care of plant roots by preventing root circling inside a plant pot or container. The Examiner has not asserted a field of endeavor, supported by reference to explanations of the invention's subject matter in the present application that would encompass the Waterer reference. Accordingly, Applicant asserts that the Waterer reference falls clearly outside the field of the inventor's endeavor and is nonanalogous art.

Furthermore, the Waterer reference is not reasonably pertinent to the particular problem with which the inventor is involved, namely the problem of preventing root circling inside a plant container. Waterer discloses nothing to modify a plant pot for containing a plant. Accordingly, the reference is not reasonably pertinent to the prevention of root circling inside a plant container and is nonanalogous art.

The examiner must consider the circumstances of the application – the full disclosure – and weight those circumstances from the vantage point of the common sense likely to be exerted by one of ordinary skill in the art in assessing the scope of the endeavor. This test rests on an assessment of the nature of the application and claimed invention in addition to the level of ordinary skill in the art. Here, the examiner has not provided any evidence that Waterer is either within the field of the inventor's endeavor or even reasonably pertinent to the particular problem with which the inventor is involved. Therefore, Applicant asserts that Waterer is nonanalogous art and should not be considered by the examiner in making the present rejection. Reconsideration and withdrawal of the rejection is requested.

Still further, Applicant asserts that there is no suggestion, motivation or teaching to combine Waterer with Single. The examiner appears to assert that the motivation to combine the reference is "to permit water to flow from the central area (page 1, lines 95-100 of Waterer)." (Office action, page 4, lines 5-8). More particularly, the passage from Waterer that is relied upon by the examiner says that "[t]he stand 20 is formed as a flat ductile-metal plate 21, with radial ribs 22 raised on the upper side,

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so as to permit water to flow outwardly from the central opening in the bottom of the flower-pot, . . .” (Waterer, page 1, lines 95-99). The stand 20 is further described in a later paragraph stating:

The ductile plate-metal support 20 for the flower-pot provides for the free egress of water from the flower-pot when it is required to be drained and is valuable in protecting the jardinière from breakage in placing the flower-pot in it by preventing the flower-pot from coming into contact directly with the bottom and by yielding by reason of its ductile and elastic properties at the point of contact of the rim 23 with the bottom 3, so as to distribute the weight and shock (if the pot is dropped) upon the entire circumference of the bottom 3, where it is strengthened by the rim 4 and the sides 2, thus greatly reducing the risk of breakage of the jardinière. (Waterer, page 2, lines 16-30).

Accordingly, the radial ribs 22 support the flower-pot above the surface of the plate 21 to provide for the free egress of water from a hole in the bottom of a standard flower-pot. The ribs simply prevent blockage of the flower-pot's drainage hole by elevating the hole above the flat surface of the stand that would otherwise block the hole of the flower-pot. Neither the ribs 22 nor the stand 20 having the ribs 22 form part of the plant pot. Furthermore, the function and structure of the ribs is to support the bottom of a flower-pot and prevent blockage of the hole, so that water can exit the hole in the flower-pot.

There is nothing in Waterer to suggest that the plant pot itself should be modified. In fact, the design of the jardinière and the stand is meant to accommodate a standard flower-pot without any modification of the pot. Waterer does not mention any problem with water drainage inside the pot, other than the need for the jardinière to avoid blocking the central hole in bottom of the flower-pot. However, the Single reference teaches that “[t]he edge of the base 18 is positioned within one such recess 26 so as to be elevated above the lower edge 25 of the container 5.” (Single, page 4, last para., lines 6-7). Accordingly, any hole through the base of Single would not be blocked by a support

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surface.

Furthermore, Single teaches root control through use of a base that has been treated with a chemical growth retardant. Accordingly, Single teaches away from the invention of the present claims, because upon reading Single, a person of ordinary skill in the art would be led in a direction divergent from the path that the applicant took. The references certainly do not provide a "clear and particular" showing of their combinability as required. See In re Dembiczak, 175 F.3d 994, 999 (Fed. Cir. 1999).

In view of the foregoing, there is no reason that one of ordinary skill in the art, with no knowledge of the present invention, would selected the elements from Single and Waterer for combination in the manner claimed. Reconsideration and withdrawal of the rejection is requested.

Even if Single and Waterer were to be combined, albeit improperly, it is not at all clear how such a combination would be made or that any imaginable combination would be desirable. The ribs of Waterer prevent blockage of the flower-pot drainage hole, but Waterer does not teach, show or suggest that water drainage from a plant pot would be improved by incorporating ribs in the bottom thereof. Similarly, the examiner has not explained how the asserted combination would improve water flow relative to the flat base already disclosed by Single. In fact, if a plant pot base was not set truly horizontal, then ribs could actually form pools of water within the container.

Reconsideration and withdrawal of all the rejections is requested.

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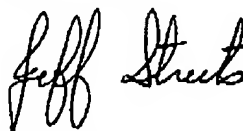
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Claims 5-8, 12, 15-24, 29, 32-34, 36-38, 40, 41, 61 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Single as modified by Waterer as applied to claim 1 above, and further in view of Anderson (US 4628634).

Because this rejection is based upon a combination of Single and Waterer, Applicant reasserts its remarks above. Reconsideration and withdrawal of all the rejection is requested.

Applicant respectfully asserts that all claims are now in condition for allowance and respectfully requests that a Notice of Allowance be issued. If the Examiner determines that a telephone conference would expedite the examination of this pending patent application, the Examiner is invited to call the undersigned attorney at the Examiner's convenience. In the event there are additional charges in connection with the filing of this Response, the Commissioner is hereby authorized to charge the Deposit Account No. 50-0714/WHIT/0019.A of the firm of the below-signed attorney in the amount of any necessary fee.

Respectfully submitted,



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